

TONGA 2021 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

The Kingdom of Tonga is a constitutional monarchy. The Legislative Assembly, a parliamentary body consisting of 17 popularly elected members and nine nobles selected by their peers, elects the prime minister. Following the November election, which international observers characterized as generally free and fair, then prime minister Pohiva Tu'i'onetoa removed himself from consideration for continuing in the position, and Siaosi Sovaleni was selected as new prime minister. While the prime minister and his cabinet are responsible for most government functions, King Tupou VI, the nobility, and their representatives retain significant authority.

The Tonga Police Force maintains internal security and reports to the Ministry of Police and Fire Services. Civilian authorities maintained effective control over the security forces. Members of the security forces committed few abuses.

Significant human rights issues included credible reports of: serious government corruption; and the existence of law criminalizing consensual same-sex sexual conduct between adults, although it is not enforced.

There were no reports that government officials committed egregious human rights abuses. There were reports of government corruption. Impunity for human rights abuses was not a problem. There was some impunity for corruption. The government took steps to prosecute and punish officials who committed human rights abuses or corruption.

Section 1. Respect for the Integrity of the Person

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and there were no reports that government officials employed them. Impunity was not a significant problem in the security forces.

Prison and Detention Center Conditions

Hu'atolitoli Prison and its psychiatric facility on the country's main island were overcrowded as growing substance abuse and mental illness increased pressure for space in the prison system.

Physical Conditions: Hu'atolitoli Prison cells built for one individual were holding up to four persons and the prison lacked a facility to house female psychiatric patients separately from other prisoners.

Administration: Authorities may investigate credible allegations of mistreatment. Church leaders visited inmates approximately four to six times a week.

Independent Monitoring: The government permitted monitoring visits by international human rights observers, although there were no requests for such visits in recent years.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention and provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements.

Arrest Procedures and Treatment of Detainees

Police may arrest suspects without a warrant during the commission of a crime; otherwise, authorities apprehend suspects with warrants issued by a local

magistrate. In either case authorities brought those arrested before a local magistrate within 24 hours, including on weekends and holidays, for judicial determination of the legality of the detention. Authorities promptly informed arrested persons of charges against them. The law provides for a functioning bail system. The constitution provides the right to initiate habeas corpus proceedings. Access to arrested persons by counsel, family, and others may be restricted, but authorities generally facilitated access. No legal aid framework existed to provide services for the indigent. Accused persons must generally represent themselves if they cannot afford legal counsel, although in more serious cases the judge may, but is not required to, appoint a pro bono lawyer.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.

Trial Procedures

The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. Although unavailability of judges, witnesses, or lawyers could delay cases, legal authorities processed most cases without undue delay. Defendants are presumed innocent and cannot be compelled to testify or confess guilt. Authorities inform them promptly and in detail of charges, and free interpretation is available if necessary. Defendants may present witnesses and evidence, confront witnesses against them, and appeal convictions. They have the right to be present at their trials, consult with an attorney of their choice in a timely manner, and have adequate time and facilities to prepare a defense. There is no provision for public defenders, but local lawyers accepted pro bono cases on an ad hoc basis. Defendants have free access to an interpreter in court, if needed.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens may seek redress through domestic courts for any violation of a human right provided for in the law.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and there were no reports that the government failed to respect these prohibitions.

Section 2. Respect for Civil Liberties

a. Freedom of Expression, Including for Members of the Press and Other Media

The constitution provides for freedom of expression, including for the press and other media, and the government generally respected these rights. An independent press, an effective judiciary, and a functioning democratic political system generally combined to promote freedom of expression, including for the media.

Freedom of Expression for Members of the Press and Other Media, Including Online Media: Independent media were active and expressed a wide variety of views without restriction, although some self-censorship occurred among journalists who feared being bankrupted by lawsuits brought by politicians.

In February the king signed into law the Electronic Communication Abuse Offences Act, punishing cyberbullying infractions with substantial fines, up to three years' imprisonment, or both. Repeated offenses could incur punitive fines, up to five years' imprisonment, or both. A service provider failing to prevent the abuse of its network for cyberbullying, to assist police inquiries into cyberbullying, or to comply with a court-issued warrant to provide access to stored data, information, or documents could face a punitive fine.

Censorship or Content Restrictions: Media outlets reported on political developments and high-profile court cases, but privately owned media exercised self-censorship when covering high-profile individuals. The board of state-owned

Tonga Broadcasting Commission (TBC) allegedly directed that board-appointed censors review all TBC programming prior to broadcast. Journalists and media watchdogs remained concerned regarding the implications for media independence of the government's May 2020 regulations on unlawful provision of false and misleading information, and noncompliance with license conditions, including a regulation imposing a significant fine for publishing or broadcasting sensitive information. The nongovernmental organization (NGO) CIVICUS noted in February a feeling among media personnel that the regulations were about "protecting people in power."

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Workplaces and internet cafes provided internet access, but most homes did not have internet access.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement and the Right to Leave the Country

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

e. Status and Treatment of Internally Displaced Persons

Not applicable.

f. Protection of Refugees

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection to refugees, asylum seekers, or other persons of concern when they were present in the country.

Access to Asylum: The law does not provide for the formal granting of asylum or refugee status, and the government has not established a system for providing protection to refugees. The principal immigration officer has wide discretionary powers under immigration laws and may allow noncitizens to remain in the country, including on humanitarian grounds.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: The country held its most recent parliamentary election in November. International observers deemed the election to be generally free and fair. Then prime minister Pohiva Tu'i'onetoa removed himself from consideration for continuing in the position despite his re-election to parliament, and Siaosi Sovaleni was elected as new prime minister in December.

Parliament has 26 elected members. Of these, citizens directly elect 17, and the 33 hereditary nobles elect nine of their peers. Parliament elects the prime minister, who appoints the cabinet. The prime minister may select up to four cabinet members from outside parliament. The law accords these cabinet members parliamentary seats for the duration of their tenure in the cabinet.

The king retains significant powers, such as the power to withhold his assent to

laws (with no possibility of parliamentary override) and to dissolve parliament.

Participation of Women and Members of Minority Groups: No laws limit participation of women or members of historically marginalized and minority groups in the political process, and they did participate. A variety of institutional and cultural factors kept women's representation low. Among these were the reservation of nine seats in parliament for nobles, all of whom are men; continuing male domination of informal local government systems, which deny women "entry-level" positions in politics; and cultural attitudes across the population regarding women's proper roles and competence. The rate of registration to vote among women was the same as the rate among men, and women have the same legal rights to run for election. Voters did not elect any women to parliament in the November election, a backslide in representation from prior elections. A woman may become queen, but the constitution forbids women from inheriting hereditary noble titles or becoming chiefs.

There were no members of ethnic minority groups in the government or parliament.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented the law effectively. There were reports of government corruption during the year.

Corruption: In July the Supreme Court imposed a six-year prison sentence on Minister of Infrastructure and Tourism 'Akosita Lavulavu and her husband, 'Etuete Lavulavu, a former government minister, for fraud and attempted bribery of a court witness. They also used false student numbers to secure more than 550,000 Tongan pa'anga (\$240,000) in state funding for a vocational learning center they owned but kept the money for themselves.

The Office of the Auditor General reports directly to the Legislative Assembly, aiming to enhance accountability and transparency in all government activities and improve public-sector performance. The Office of the Ombudsman is empowered

to investigate official corruption. Both entities actively collaborated with other government agencies but were not considered by civil society groups to be independent of political control, operationally efficient, or sufficiently resourced.

Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: The Office of the Ombudsman oversees the rights of every citizen in the country, including members of the public service and vulnerable members of society such as women, children, prisoners, and persons with disabilities.

Section 6. Discrimination and Societal Abuses

Women

Rape and Domestic Violence: Rape of women is punishable by a maximum of 15 years in prison. “Indecent assault” of men is punishable by a maximum of 10 years’ imprisonment. The law recognizes spousal rape. The law makes domestic violence a crime punishable by a maximum of 12 months in prison, a substantial fine, or both. Repeat offenders face a maximum penalty of three years in prison or a steeper maximum fine. The law provides for protection from domestic violence, including by issuance of protection orders; clarifies the duties of police; and promotes the health, safety, and well-being of domestic-violence victims.

In July Polotu Fakafanua-Paunga, Head of the Women’s Affairs and Gender Equality Division, Ministry of Internal Affairs, stated that reluctance among women to report domestic violence caused the cycle of violence to continue. In August, while citing significant progress in implementing domestic-violence legislation, she observed that continuing challenges included lack of financial and human resources, limited access to assistance during emergencies such as the

COVID-19 pandemic or natural disasters, and lack of services on the outer islands.

Police investigated reported rape cases, and the government prosecuted these cases under the law. In two April cases, for example, a man was sentenced to five years and 10 months in prison for raping a woman on the country's main island in 2018, and a repeat sexual offender was sentenced to eight years and nine months in prison for raping a minor. The police domestic-violence unit has a "no-drop" policy in complaints of domestic assault, and once filed, domestic-violence cases cannot be withdrawn and must proceed to prosecution in the magistrates' courts. The Ministry of Police, local communities, churches, youth groups, the Women and Children Crisis Center, and other NGOs conducted training programs for government agencies and civil society groups on matters such as human rights, child abuse, sexual harassment, violence against women, and domestic violence.

Police worked with the National Center for Women and Children and with the Women and Children Crisis Center to provide shelter for abused women and for girls and boys younger than age 14. With funding assistance by the Australian government, the Women and Children Crisis Center operated a safe house for victims until June. In July the Justice Department's Family Legal Protection Aid Center launched an online portal to provide anonymous access for survivors of domestic or gender-based violence to legal information and counsel, without compromising the confidentiality of their cases.

Sexual Harassment: Sexual harassment is not a crime under the law, but physical sexual assault can be prosecuted as indecent assault. Complaints received by the police domestic violence unit indicated that sexual harassment of women was a common problem.

Reproductive Rights: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities. There were no legal or social barriers to accessing contraception, but some religious beliefs and cultural barriers, including the stigma attached to certain health topics, caused reluctance among women to visit clinics offering modern methods. The Guttmacher Institute reported that in 2019, among women ages 15 to 49 who wanted to avoid a pregnancy, 49 percent had an unmet need for such methods. No government policies or legal, social, or cultural barriers adversely affected access to skilled

attendance during pregnancy and childbirth. According to a 2019 Multiple Indicator Cluster Survey carried out by the government and supported by UNICEF, approximately 16 percent of women who reported menstruating in the previous 12 months also reported they did not participate in social activities, school, or work due to their immediately preceding menstruation. The government provided access to health care, including emergency contraception, to survivors of sexual violence. The government also provided financial support to NGOs that assist survivors of sexual violence.

Discrimination: Inheritance laws, especially those concerned with land, discriminate against women. Women can lease land, but inheritance rights pass through male heirs only; a male child born out of wedlock has precedence over the deceased's widow or daughter. If there are no male relatives, a widow is entitled to remain on her husband's land as long as she does not remarry and remains celibate. The inheritance and land rights laws also reduced women's ability to access credit and to own and operate businesses.

Discrimination against women with respect to employment and wages occurred (see section 7.d.).

Systemic Racial or Ethnic Violence and Discrimination

The law restricts ownership and operation of retail food stores to citizens. Ethnic Chinese who are naturalized Tongan citizens dominated the retail sector in many towns. There were reports in recent years of crime and societal discrimination directed at members of the Chinese minority. In May an 18-year-old man was sentenced to 18 months' imprisonment for causing serious bodily harm when he used rocks to injure an ethnic Chinese shopkeeper. In November three men received prison sentences for a string of armed robberies at three shops run by ethnic Chinese individuals on the country's main island of Tongatapu.

Children

Birth Registration: Individuals acquire citizenship at birth automatically if at least one parent is a citizen. Birth in the country per se does not confer citizenship.

Education: Education to age 18 is compulsory but not, by law, free. There is a

policy, however, that provides free education to all children between ages six and 14.

Child Abuse: There are laws against child abuse. If a case is reported to police, the child is removed from the parents or guardians and placed in the care of either the Women and Children Crisis Center or the National Center for Women and Children while police investigate. The Women and Children Crisis Center implemented a variety of child-abuse awareness programs at schools from primary to tertiary levels.

Child, Early, and Forced Marriage: The legal minimum age for marriage is 15. According to NGOs, child marriages were a result of several factors, including parental pressure, teenage pregnancy, or forced marriage to rapists.

Sexual Exploitation of Children: The minimum age for consensual sex is 15. Violators who sexually abuse children may be charged with “carnal knowledge of a child under age 12,” which carries a maximum penalty of life in prison, or “carnal knowledge of a child under 15,” which carries a maximum penalty of five years in prison. In June a 47-year-old man was sentenced to three years and six months in prison for committing “indecent assault” on a child younger than age 12. There were anecdotal reports of children being subjected to sex trafficking. The law prohibits the procurement of women and girls younger than age 21 for commercial sexual exploitation but does not criminalize the procurement of boys for the same. The law also prohibits child pornography with penalties of a substantial fine or a maximum of 10 years in prison for individuals and a steeper maximum fine for corporations; however, the use of children younger than age 14 in the production of pornography is not criminally prohibited.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State’s *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

Anti-Semitism

There was no known resident Jewish community and there were no reports of anti-

Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

Persons with Disabilities

The constitution broadly prohibits discrimination based on disability, but no laws specifically prohibit discrimination against persons with physical, sensory, intellectual, or mental disabilities. There are no legally mandated services or government programs for adults with disabilities, including for building accessibility or access to communications and information.

A Ministry of Education and Training program to bring children with disabilities into primary schools continued during the year. Many school buildings, however, were not accessible to students with physical disabilities, and attendance rates of children with disabilities at all educational levels were lower than those of students without disabilities.

The National Council on Disability and the Ministry of Internal Affairs maintained a program to provide modest financial assistance to persons with disabilities.

HIV and AIDS Social Stigma

There were no reports of discrimination or violence against persons based on HIV or AIDS status, but social stigma or intimidation may have prevented reporting of incidents of discrimination or violence.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

Sodomy is listed as a crime with a maximum penalty of 10 years in prison, but there were no reports of prosecutions under this provision for consensual same-sex sexual conduct between adults. No law specifically prohibits discrimination based on sexual orientation or gender identity or addresses hate crimes. No criminal

justice mechanisms exist to aid in the prosecution of bias-motivated crimes against lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) individuals. Society accepted a subculture of transgender dress and behavior, and a prominent NGO's annual festival highlighted transgender identities. Social stigma or intimidation may have prevented reporting of incidents of violence or discrimination.

On September 2, a man, Inoke Siolongo Filivaolelei Tonga, pleaded guilty to the murder on May 1 of Polikalepo Kefu, an internationally known human rights and LGBTQI+ activist. On October 11, the Supreme Court sentenced him to life imprisonment. At a May candlelight vigil, a member of the royal family, Princess Frederica Tuita, publicly lamented that "our society has yet to take command of the responsibility required to truly commit" to Tongan values embodied by Kefu – love, humility, respect, and loyalty – "and implement them where it counts." LGBTQI+ communities in the South Pacific region called for repeal of the country's law criminalizing sodomy.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right to form and join independent unions, but the government has not promulgated regulations on the formation of unions, collective bargaining, or the right to strike. No law specifically prohibits antiunion discrimination or provides for reinstatement of workers fired for union activity. There was no dispute resolution mechanism in place specifically for labor disputes, although persons could take cases to court or refer cases to the Office of the Ombudsman. The law does not include a right to collective bargaining, and there were no reports it occurred.

The government did not take effective action to implement and enforce the law, but employers generally respected freedom of association. Penalties for legal violations include criminal fines, which were not commensurate with those under other laws involving denials of civil rights, such as discrimination, and which were seldom applied. Administrative and judicial procedures were subject to lengthy delays and appeals.

Trade unions and a variety of other worker associations existed. For example, the Friendly Islands Teachers Association and the Tonga Nurses Association were legally incorporated as civil society organizations, and the Friendly Islands Seafarer's Union Incorporated was affiliated with the International Transport Workers Federation. The Public Service Association acted as a de facto union representing all government employees.

b. Prohibition of Forced or Compulsory Labor

The law does not prohibit all forms of forced or compulsory labor. Protections do not apply to workers in domestic labor, and debt bondage is not specifically prohibited. The government took no action to prevent forced labor or to prosecute perpetrators. Penalties were criminal but were not commensurate with those for other analogous serious crimes, such as kidnapping. There were unconfirmed anecdotal reports of forced labor among women and children in domestic service (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

c. Prohibition of Child Labor and Minimum Age for Employment

No legislation prohibits child labor or specifies a minimum age for employment. There were no reports that child labor existed in the formal wage economy. According to the National Center for Women and Children and other NGOs, some school-age children worked in the informal sector in traditional family activities such as subsistence farming and fishing which exposed them to hazardous conditions.

The law does not meet the international standard for the prohibition of child trafficking because it does not specifically prohibit the domestic trafficking of children, nor does it comprehensively or explicitly criminalize forced labor. The government did not effectively enforce laws to prevent child labor or prosecute perpetrators.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

d. Discrimination with Respect to Employment and Occupation

The law does not prohibit discrimination based on any personal characteristic, feature, or group affiliation, although the constitution broadly prohibits discrimination based on disability. The government did not take effective steps to prevent discrimination or respond to reports of discrimination. Discrimination against women in employment and wages occurred. Women participated in the work force at a lower rate than men, were generally employed in lower-skilled jobs, and earned measurably less than men. Persons with disabilities experienced discrimination in hiring and access to the workplace.

e. Acceptable Conditions of Work

Wage and Hour Laws: There is no minimum wage, but the Ministry of Commerce, Consumer, Trade, Innovation, and Labor sets minimum wage-level guidelines.

The law establishes a workweek of 40 hours, but it does not provide for overtime pay or for at least three paid holidays. Some employers, including some government offices, paid their workers overtime, and most provided paid holidays.

Occupational Safety and Health: The law stipulates occupational health and safety standards for each sector, such as fisheries and agriculture. These standards were current and appropriate for main industries but did not cover persons in domestic service. Protected workers can remove themselves from situations that endanger health or safety without jeopardizing their employment. The government did not effectively enforce the law. Enforcement of wage, hour, health, and occupational regulations was inconsistent. The government did not have inspectors to enforce compliance.

Informal Sector: The Ministry of Commerce, Consumer, Trade, Innovation, and Labor has the authority to enforce labor standards in all sectors, including the informal economy; however, there were no inspectors to enforce compliance. Penalties for violations took the form of monetary fines, which were not effective as they were not applied.